

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2602 OF 2006.

Smt. Anita @ Vanita Shantaram More,
Residing at & Post Kasai,
Taluka Khed, Dist. Ratnagiri
and having her address at
C/o Shri Vilas Shripat Sakpal, A-2,
Room No. 67, Anand Krupa Housing Society,
Hajuri Road, Wagle Estate, Thane-400604 ...Petitioner

V/s

1. State of Maharashtra
2. Thane Municipal Commissioner,
Thane (West).
3. Anand Krupa Sahakari Grihanirman
Sanstha Ltd.,
(A Society registered and incorporated
under Mah. Co.op. Society's Act, 1960
and the Rules made there under) and
having it's office at Plot No. 128 &
129 Hanuman Nagar, Hajuri Road,
Hajuri, Wagle Estate, Thane-04
4. M/s Shree Constructions,
(Through its Proprietor/Parnter
Shri Anil Kumar Surajnath Singh)
Anand Krupa Towers, Plot Nos. 128
and 129 Hajuri Road, Hajuri,
Wagle Estate, Thane. ..Respondents.

Shri R.P. Lote for the petitioner.
Shri R.D. Rane, AGP for Respondent No.1.
Shri A.A. Garge for Shri R.S. Apte for Respondent No.2.
Shri S.M. Oak for respondent No.3.
Shri Sagar Joshi for respondent No.4.

**CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.**

DATE : 29TH NOVEMBER, 2006.

ORAL JUDGMENT (PER J.H. BHATIA, J.)

. Heard the learned Counsel for the parties.

2. The petitioner, by this petition, seeks direction to the respondents to give possession of one tenement in "A" or "B" Wing of Anand Krupa Housing Society, Plot Nos. 128 and 129, Hajuri Road, Wagle Estate, Thane, which are constructed for the rehabilitation of the people, who were displaced from their huts on the land for the purpose of construction of a 60 feet wide road. According to her, she was living in one of the huts since prior to 1976. When the new road was proposed to be constructed. The Government sanctioned a Slum Redevelopment Scheme under Maharashtra Slum Area (Improvement, Clearance and Re-development), Act, 1971 and all 256 hutment dwellers residing on plot Nos. 128 and 129 were assured of allotment of tenements in the building to be newly constructed. Respondent No.2, Thane Municipal Corporation was appointed as

Designated Authority for execution of the Scheme and respondent No.4 is the developer. However, after construction of the building the petitioner was refused allotment of a tenement. Therefore, she has filed this petition. Besides allotment and possession of one tenement, she also claims rent at the rate of Rs. 1000/- per month since December, 2001, till the delivery of possession of tenement to her, as per the said Scheme.

3. On behalf of Respondent No.2, Thane Municipal Corporation, affidavit-in-reply has been filed by the Executive Engineer and it is disclosed that the petitioner herself is a regular resident of Village Kasai, Taluka Khed, Dist. Ratnagiri, while her husband Shantaram More, who was residing in one room in the hutment area, died on 7/4/2004. The petitioner, as heir of her husband, was allotted tenement No.21 on the 1st floor in rehabilitation building No. A-2 and possession was also given to her. As even that tenement was sold away by the petitioner. The room in the name of the petitioner was sold away by her to Sunil Tanaji Kadam who was already residing as a tenant. Therefore,

tenement No. 69 on the 4th floor of rehabilitation building A-2 was allotted to said Sunil Kadam and he was put in possession of the same. In view of the documentary evidence in the form of ration card, election identity card, possession receipt and application signed by the several local peoples, it was found that Sunil Kadam was residing in that room and therefore, the tenement was allotted to him. It is contended that the petitioner was not eligible to allotment of tenement in the rehabilitation building.

4. From the facts disclosed in the affidavit by Executive Engineer, Anil Gangadhar Bhirud, it is clear that the petitioner herself was not residing in hutment area and as her room was occupied by Sunil Kadam as a tenant and then it was sold to him and therefore, in the rehabilitation building, tenement No. 69 was allotted to him and not to the petitioner. Not only this, as an heir of husband Shanatram More a tenement No.21 was allotted to her but that tenement was also sold away by her. It clearly shows that the petitioner was not living in the hutment area and therefore, she was not entitled to allotment of a tenement under the

Rehabilitation Scheme. Naturally, the Rehabilitation Scheme was to rehabilitate the people who were residing in the hutment area on the said plots at the time of construction of new 60 feet wide road. The petitioner was admittedly, not owner of that hut or the land below it. The plots belonged to Respondent No. 2, Municipal Corporation. Therefore, she could not claim title over it. Even in the affidavit, she has given her permanent address at Kasai, Taluka Khed, District Ratnagiri.

5. In view of the above circumstances, we find no merit in the present petition. Therefore, petition stands dismissed summarily.

(J.H. BHATIA, J.)

(B.H. MARLAPALLE, J.)